

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LISA MOLESKY, as guardian ad litem
for J.M., a minor,

Plaintiffs,

v.

OSCAR CARRILLO, ET AL.,

Defendants.

Case No. 1:22-cv-01567-ADA-CDB

SCHEDULING ORDER (Fed. R. Civ. P. 16)

Discovery Deadlines:

- Amend by: May 8, 2023
- Rule 26 Disclosures: April 5, 2023
- Expert Disclosures: September 22, 2023
- Fact Discovery Cut-Off: September 8, 2023
- Expert Discovery Cut-Off: November 17, 2023
- Mid-Discovery Status Conference: July 24, 2023, at 9:30 a.m., in Bakersfield Federal Courthouse 510 19th Street, Bakersfield, CA 93301

Non-Dispositive Motion Deadlines:

- Filing: December 1, 2023
- Hearing: On or before January 8, 2024, at 10:30 a.m., in Bakersfield Federal Courthouse

Dispositive Motion Deadlines:

- Filing: January 22, 2024
- Hearing: March 4, 2024, at 1:30 p.m., in Robert E. Coyle Federal Courthouse, Fresno, Courtroom 1, 8th Floor

Pre-Trial Conference: July 1, 2024, at 1:30 p.m.,
in Fresno Federal Courthouse, Courtroom 1,
8th Floor

Trial: August 27, 2024, at 8:30 a.m., in Fresno
Federal Courthouse, Courtroom 1, 8th Floor

Plaintiff, a minor, through is guardian ad litem asserts claims under 42 U.S.C. § 1983 for individual liability, failure to intervene, and supervisory liability. Plaintiff also raises claims for relief for violations of Cal. Civ. Code § 52.1 (“the Bane Act”), negligence under Cal. Gov. Code § 844.6, and False Imprisonment.

I. Date of Scheduling Conference

March 9, 2023, before Magistrate Judge Christopher D. Baker.

II. Appearances of Counsel

Erin Darling on behalf of Plaintiff.

Nicholas Street appeared on behalf of Defendants.

III. Magistrate Judge Consent:

Currently there is no joint consent to magistrate judge jurisdiction.

Notice of Congested Docket and Court Policy of Trailing

Due to the District Judges’ heavy caseload, the adopted policy of the Fresno Division of the Eastern District is to trail all civil cases. The parties are hereby notified that for a trial date set before a District Judge, the parties will trail indefinitely behind any higher priority criminal or older civil case set on the same date until a courtroom becomes available. The trial date will not be reset.

The Magistrate Judges’ availability is far more realistic and accommodating to parties than that of the U.S. District Judges who carry the heaviest caseloads in the nation and who must prioritize criminal and older civil cases over more recently filed civil cases. A United States Magistrate Judge may conduct trials, including entry of final judgment, pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and Local Rule 305. Any appeal from a judgment entered by a United States Magistrate Judge is taken directly to the United States Court of Appeal for the Ninth Circuit.

The Fresno Division of the Eastern District of California, whenever possible, is utilizing United States Article III District Court Judges from throughout the nation as Visiting Judges. Pursuant to the Local Rules, Appendix A, such reassignments will be random, and the parties will receive no advance notice before their case is reassigned to an Article III District Court Judge from outside of the Eastern District of California.

Therefore, the parties are directed to consider consenting to Magistrate Judge jurisdiction to

conduct all further proceedings, including trial, and to file a consent/decline form (provided by the Court at the inception of this case) indicating whether they will consent to the jurisdiction of the Magistrate Judge.

IV. Pleading Amendment Deadline

Any requested pleading amendments are ordered to be filed, either through a stipulation or motion to amend no later than **May 8, 2023**. The parties are advised that filing motions and/or stipulations requesting leave to amend the pleadings does not reflect on the propriety of the amendment or imply good cause to modify the existing schedule, if necessary. All proposed amendments must (A) be supported by good cause pursuant to Fed. R. Civ. P. 16(b) if the amendment requires any modification to the existing schedule, *see Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992), and (B) establish, under Fed. R. Civ. P. 15(a), that such an amendment is not (1) prejudicial to the opposing party, (2) the product of undue delay, (3) proposed in bad faith, or (4) futile, *see Foman v. Davis*, 371 U.S. 178, 182 (1962).

V. Discovery Plan and Cut-Off Date

The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1) by **April 5, 2023**.

The parties are ordered to complete all discovery pertaining to non-experts on or before **September 8, 2023**, and all discovery pertaining to experts on or before **November 17, 2023**.

The parties are directed to disclose all expert witnesses¹, in writing, on or before **September 22, 2023**, and to disclose all rebuttal experts on or before **October 12, 2023**. The written designation of retained and non-retained experts shall be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C) and shall include all information required thereunder. Failure to designate experts in compliance with this order may result in the Court excluding the testimony or other evidence offered through such experts that are not disclosed pursuant to this order.

¹ In the event an expert will offer opinions related to an independent medical or mental health evaluation, the examination SHALL occur sufficiently in advance of the disclosure deadline so the expert's report fully details the expert's opinions in this regard.

1 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to experts
2 and their opinions. Experts must be fully prepared to be examined on all subjects and opinions
3 included in the designation. Failure to comply will result in the imposition of sanctions, which may
4 include striking the expert designation and preclusion of expert testimony.

5 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement
6 disclosures and responses to discovery requests will be strictly enforced.

7 A mid-discovery status conference is scheduled for **July 24, 2023**, at 9:30 a.m. before
8 Magistrate Judge Christopher D. Baker. Counsel SHALL file a joint mid-discovery status conference
9 report no later than one week before the conference. Counsel also SHALL lodge the joint status report
10 via e-mail to CDBorders@caed.uscourts.gov. The joint status report SHALL outline the discovery
11 counsel have completed and that which needs to be completed as well as any impediments to
12 completing the discovery within the deadlines set forth in this order. Counsel SHALL discuss
13 settlement and certify in the joint status report (1) that they have met/conferred regarding settlement,
14 and (2) proposed dates for convening a settlement conference before a U.S. magistrate judge.

15 **VI. Pre-Trial Motion Schedule**

16 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
17 than **December 1, 2023²** and heard on or before **January 8, 2024**. Discovery motions shall be set
18 before Magistrate Judge Baker. For these hearings and at the direction of the Courtroom Deputy Clerk,
19 the Court may permit counsel to appear remotely (via Zoom) or via teleconference [(877) 402-9757,
20 Access Code 6966236] provided the Courtroom Deputy Clerk receives a written notice of the intent to
21 appear telephonically no later than five court days before the noticed hearing date. All other non-
22 dispositive hearings SHALL be set before Judge de Alba.

23 No motion to amend or stipulation to amend the case schedule will be entertained unless it is
24 filed at least one week before the first deadline the parties wish to extend. Likewise, no written
25 discovery motions shall be filed without the prior approval Magistrate Judge Baker. A party with a
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28 ² Non-dispositive motions related to non-expert discovery SHALL be filed within a reasonable time of
discovery of the dispute, but in no event later than 30 days after the expiration of the non-expert discovery
deadline.

1 discovery dispute must first confer with the opposing party in a good faith effort to resolve by
2 agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party promptly
3 shall seek a telephonic hearing with all involved parties and Magistrate Judge Baker. To schedule this
4 telephonic hearing, the parties are ordered to contact the Courtroom Deputy Clerk, Susan Hall, at (661)
5 326-6620 or via email at SHall@caed.uscourts.gov. At least three days before the conference, counsel
6 SHALL file informal letter briefs detailing their positions. The briefs may not exceed 7 pages,
7 excluding exhibits. Counsel must comply with Local Rule 251 with respect to discovery disputes or
8 the motion will be denied without prejudice and dropped from the Court's calendar.

9 All dispositive pre-trial motions shall be filed no later than **January 22, 2024**, and heard no
10 later than **March 4, 2024**, in Courtroom 1 at 1:30 p.m. before the Honorable Ana de Alba, United
11 States District Judge. In scheduling such motions, counsel shall comply with Fed. R. Civ. P. 56 and
12 Local Rules 230 and 260.

13 **VII. Motions for Summary Judgment or Summary Adjudication**

14 At least 21 days before filing a motion for summary judgment or motion for summary
15 adjudication, the parties are ORDERED to meet, in person or by telephone, to confer about the issues to
16 be raised in the motion.

17 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a
18 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole
19 or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the
20 issues for review by the court; 5) explore the possibility of settlement before the parties incur the
21 expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

22 The moving party SHALL initiate the meeting and SHALL provide a complete, proposed
23 statement of undisputed facts at least five days before the conference. The finalized joint statement of
24 undisputed facts SHALL include all facts that the parties agree, for purposes of the motion, may be
25 deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint
26 statement of undisputed facts.

27 In the notice of motion, the moving party SHALL certify that the parties have met and
28 conferred as ordered above or set forth a statement of good cause for the failure to meet and confer.

1 Failure to comply may result in the motion being stricken.

2 **VIII. Pre-Trial Conference Date**

3 **July 1, 2024**, at 1:30 p.m. in Courtroom 1 before the Honorable Ana de Alba, United States
4 District Judge.

5 The parties are ordered to file a Joint Pretrial Statement pursuant to Local Rule 281(a)(2). The
6 parties are further directed to submit a digital copy of their pretrial statement in Word format, directly
7 to Judge de Alba's chambers, by email at ADAorders@caed.uscourts.gov.

8 Counsels' attention is directed to Rules 281 and 282 of the Local Rules of Practice for the
9 Eastern District of California, as to the obligations of counsel in preparing for the pre-trial conference.
10 The Court will insist upon strict compliance with those rules. In addition to the matters set forth in the
11 Local Rules the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the
12 Court to explain the nature of the case to the jury during voir dire.

13 **IX. Trial Date**

14 **August 27, 2024**, at 8:30 a.m. in Courtroom 1 before the Honorable Ana de Alba, United States
15 District Judge.

16 A. This is a jury trial.

17 B. Counsels' Estimate of Trial Time: 4-7 days

18 C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of
19 California, Rule 285.

20 **X. Settlement Conference**

21 The parties are advised that Judge de Alba requires that a mandatory settlement conference be
22 conducted prior to trial by a federal judge. Where the parties filed a summary judgment/adjudication
23 motion, a settlement conference shall be scheduled 30 days after the motion is fully briefed. In cases
24 where the parties do not file a summary judgment/adjudication motions, a settlement conference shall
25 be scheduled 30 days after the last day for the filing of dispositive motions. Unless otherwise requested
26 by the parties, the Settlement Conference will be set before Magistrate Judge Baker.

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**XI. Request for Bifurcation, Appointment of Special Master, or other
Techniques to Shorten Trial**

Not applicable at this time.

XII. Related Matters Pending

There are no pending related matters.

XIII. Compliance with Federal Procedure

All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure and the Local Rules of Practice of the Eastern District of California, and to keep abreast of any amendments thereto. The Court must insist upon compliance with these Rules if it is to efficiently handle its increasing case load and sanctions will be imposed for failure to follow both the Federal Rules of Civil Procedure and the Local Rules of Practice for the Eastern District of California.

XIV. Effect of this Order

The foregoing order represents the best estimate of the court and counsel as to the agenda most suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the parties determine at any time that the schedule outlined in this order cannot be met, counsel are ordered to notify the court immediately of that fact so that adjustments may be made, either by stipulation or by subsequent status conference.

The dates set in this Order are considered to be firm and will not be modified absent a showing of good cause even if the request to modify is made by stipulation. Stipulations extending the deadlines contained herein will not be considered unless they are accompanied by affidavits or declarations, and where appropriate attached exhibits, which establish good cause for granting the relief requested.

Failure to comply with this order may result in the imposition of sanctions.

IT IS SO ORDERED.

Dated: March 10, 2023


UNITED STATES MAGISTRATE JUDGE